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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

KEITH E. McKINLEY,

Defendant and Appellant.

A103830

(Lake County  
Super. Ct. No. CR5307E)

Defendant Keith E. McKinley operated a clandestine methamphetamine laboratory in Lake County. His motion to suppress the evidence found at the laboratory was denied. He then pled guilty to manufacturing methamphetamine (Health & Saf. Code, § 11379.6, subd. (a)) and possessing a silencer for a firearm (Pen. Code, § 12520), as well as related enhancements. He now contends his motion to suppress should have been granted because the affidavit in support of the search warrant for the methamphetamine laboratory did not establish probable cause for the search. We disagree and affirm.

**I. FACTS**

The search warrant authorized the search of two buildings in a remote area of Lake County: “Location #1” and “Location #2.” Location #1 is described as “a 20’ x 60’ shed with a wood exterior . . . with a metal roof and a large white roll up metal door. . . . The shed is located approximately 1.1 miles south of Socrates Mine Road and . . . is the first building located on Verdant Vales Road.” Location #2 is “a 20’ x 60’ double wide trailer

. . . approximately 1.5 miles south of Socrates Mine Road [which] is the second building located on Verdant Vales Road.”

In support of probable cause, the search warrant affidavit set forth the following facts.<sup>1</sup>

The affiant, Eduardo Heredia, is a Special Agent of the Bureau of Narcotic Enforcement of the California Department of Justice (Bureau). He was assigned to the Bureau’s Clandestine Laboratory Investigations Team. His “primary duty is to investigate clandestine drug laboratories throughout the State of California.” Special Agent Heredia has substantial experience regarding narcotics, the investigation and the method of operation of clandestine drug labs, and the manufacture of methamphetamine.

Heredia and other Bureau agents conducted surveillance of members of a suspected methamphetamine manufacturing ring on five days in January 2002.<sup>2</sup> The surveillance began in Hayward, and followed the suspects’ path from Hayward to Santa Rosa and ultimately to a remote location in Lake County.

At 3:00 p.m. on January 10, Special Agent Careaga saw a tan 1994 Honda Accord, registered to Maximino Macias of East Palo Alto, arrive at 208 Smalley Avenue in Hayward. Both the driver and passenger were Hispanic men. A few minutes later, a white 1990 Lincoln Mercury, registered to a Marco Rojas, arrived at the Smalley Avenue house. Its driver and passenger were also Hispanic men.

At 4:00 p.m., the Honda and Lincoln left the Smalley house, driven by the original drivers who each carried a male Hispanic passenger. The Honda went south on Highway 880; the Lincoln went north. The agents followed the Honda, which traveled to Menlo

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<sup>1</sup> We are aware that certain facts in the Attorney General’s brief are unsupported by the accompanying citation to the affidavit. We have disregarded any stated fact not supported by the record.

<sup>2</sup> Subsequent references to dates in the month of January refer to January 2002. All times of day are approximate, as indicated in the affidavit—for the sake of style we omit the qualifiers “about” or “approximately” before each time of day.

Park to pick up a Hispanic woman and then went to a Ramada Inn in East Palo Alto to drop off the driver.

The Honda and the Lincoln returned to the Smalley house in Hayward at 6:00 p.m. Careaga saw the driver and passenger of the Lincoln—both Hispanic men— remove from the Lincoln’s trunk five 1-gallon cans of denatured alcohol and Coleman fuel, 10-15 feet of thick hose, two 5-gallon propane tanks, three 5-gallon cans of Freon, and three large plastic grocery bags that appeared to be heavy. The men placed these items in a maroon 1996 Chevrolet minivan registered to Miguel Orozco of Windsor. The two men also removed a box from the trunk of the Honda and placed it in the maroon van. The box “looked similar to the size of boxes that contain heating mantels.”

While the men finished loading the items in the minivan, they “looked all around to see if anyone was or had been watching them.”

Heredia knew from experience that the items loaded into the minivan were used in, and were commonly associated with, the “cooking process” for manufacturing methamphetamine. For instance, denatured alcohol, Coleman fuel, and Freon are used in the manufacturing process; the process involves using heating mantels to heat chemicals, and thick hoses are used to direct the resulting chemical fumes into an absorbent such as water or cat litter.

At 7:40 p.m., Careaga saw the driver of the Honda park his car “[d]irectly against and behind” the minivan.

On January 13, the maroon minivan was parked behind the Smalley Avenue house. At 4:00 a.m., Heredia looked into the minivan and saw 20-30 cans of denatured alcohol, about six cans of “camp fuel” (presumably Coleman fuel), and 10-20 feet of thick hose.

At 2:30 p.m., on January 14, Special Agent Fox saw a black Oldsmobile Intrigue arrive at the Smalley Avenue house and park next to the maroon minivan. Two Hispanic men got out of the Intrigue, walked to the rear of the house, and spoke with five other Hispanic men. One of the men backed the Intrigue up closer to the minivan. While three

men stood lookout, others removed the minivan's back seat. Three men removed 50-60 cans of denatured alcohol from the trunk of the Intrigue and placed them in the minivan.

Fox also saw two Hispanic men remove a one-foot by three-foot cardboard box and a yellow plastic bag from the minivan, and place them in the trunk of a blue 1997 Chrysler registered to Jose Luis Farias of San Jose. The box was "consistent with the size of a pseudoephedrine pill box" and the bag "contained pill bottles consistent with the size of 1000 count pseudoephedrine pill bottles." Pseudoephedrine pills are a source of ephedrine, the key ingredient of methamphetamine.

Fox then saw a Hispanic man and woman arrive at the Smalley Avenue house in a green 1997 Ford Taurus, registered in the State of Idaho to a Marcio Muriel. The man took two small boxes out of the trunk of the Taurus and took them into the house. Another Hispanic man walked out of the house with the boxes and placed them in the maroon minivan. All of the observed suspects then emerged from the house and clustered around the driver of the Taurus, who appeared to be giving instructions. All the suspects got into various vehicles and left. The agents followed the maroon minivan and the blue Chrysler, which "were loaded with items commonly associated with the manufacture [of] methamphetamine."

The minivan and the Chrysler stopped for gas at 3:00 p.m. at A Street and Highway 880 in Hayward. They then headed north on Highway 880 toward Santa Rosa.

At 6:00 p.m., the minivan and the Chrysler pulled into a Jack in the Box fast-food restaurant off Highway 101 in Santa Rosa. The vehicular party was joined by a gray 1993 Chevrolet pickup truck registered to Santa Rosa resident Evgardo Galvan. At 6:18 p.m., the three vehicles left the Jack in the Box and drove to a Motel 6 on Cleveland Avenue in Santa Rosa. The occupants, a total of six Hispanic men, checked into the Motel 6.

At 6:42 the next morning, January 15, Special Agent George saw the pick-up truck—which had apparently left the Motel 6 the previous evening or during the night—arrive at the Motel 6. The pickup parked behind the maroon minivan. Two Hispanic men walked out of one of the motel rooms, went to the rear of the pick-up truck, and

opened the truck's camper shell. The men removed about 15 items from the camper shell and placed them in the minivan. The men returned to their room and the pick-up truck drove off.

At 11:47 a.m., Careaga saw six Hispanic men walk to the maroon minivan and the blue Chrysler and drive away. The agents followed the two vehicles to "a remote location on Verdant Vales Road in Lake County which is approximately 1.1 miles from Socrates Mine Road." At 2:30 p.m., Special Agent DaValle saw several Hispanic men "unload items from the rear of the blue Chrysler and place them into the minivan."

At this point in the affidavit Heredia stated that, based on his training and experience, "Mexican National manufacturers are known to seek out isolated locations in order to manufacture methamphetamine and avoid detection by law enforcement."

On January 16, agents Careaga and Fox saw "the maroon minivan and an unknown [Hispanic man] standing outside the methamphetamine laboratory location at Verdant Vales Road in Lake County . . . ." They saw an unknown Caucasian man talking to the Hispanic man "at the laboratory site." The Caucasian man then got into a red pick-up truck and drove to a double-wide trailer about 1.5 miles "from the laboratory site." "The laboratory site and double wide trailer are the only two 'residences' located on Verdant Vales Road."

Heredia averred that a search of "the properties, residences and out buildings [*sic*] located at Locations #1 and #2" would "uncover a large scale methamphetamine laboratory."

The magistrate issued the search warrant. The search of Location #1 revealed a large-scale clandestine methamphetamine laboratory, equipped with numerous firearms—including an assault weapon with a silencer. Defendant was found asleep on the premises.

Defendant was charged with numerous offenses as a result of the search. He moved to suppress the evidence seized on the ground that the search warrant affidavit did not establish probable cause to link Location #1 with criminal activity—or, indeed,

establish probable cause that Location #1 was in fact a methamphetamine laboratory. The court denied the motion, ruling as follows:

“The description[s] of the locations to be searched when compared to the descriptions of the two locations and only two locations that are referred to in the warrant in my view sufficiently describes those two locations so that the conclusion reached by the affiant that the—that one location was a methamphetamine laboratory—

“First of all, I think there’s a fair inference by the magistrate that the words ‘standing outside the methamphetamine laboratory location’ is a reference to a structure of some sort as opposed to a clearing in the woods, so to speak.

“That coupled with the descriptions—the almost identical descriptions of the 20-foot-by-60-foot shed by being 1.1 miles south of Socrates Mine Road and the location where the minivan was seen as being 1.1 miles from Socrates Mine Road is sufficient for the magistrate to infer that those are the same location. One 1.1 miles from Socrates Mine Road is the same as the other 1.1 miles from Socrates Mine Road.”

The court noted that people do not travel to remote locations with chemicals and equipment related to the manufacture of methamphetamine “to do anything with a legitimate purpose.” The court found “abundant evidence” that the manufacture of methamphetamine “was going to occur 1.1 miles from Socrates Mine Road,” where the maroon minivan was parked from 2:30 p.m. on January 15 until some time the next day. The court concluded “the affidavit is sufficient to support the search of the shed located 1.1 miles from Socrates Mine Road to find out whether the . . . conclusion drawn by the affiant is accurate, that is that it’s a methamphetamine laboratory.”

After the denial of the motion to suppress, defendant pled guilty to manufacturing methamphetamine and possessing a silencer, and admitted various enhancements. He was sentenced to 16 years and eight months in state prison.<sup>3</sup>

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<sup>3</sup> Defendant had also been charged with unrelated offenses in a separate proceeding, and pled guilty to some of those additional offenses. They are not at issue on appeal.

## II. DISCUSSION

Defendant contends that the search warrant affidavit did not contain sufficient facts to establish probable cause. He argues there was no indication of any link between the searched building (referred to in the affidavit as Location #1) and any criminal activity. We disagree because the magistrate was entitled to conclude that the elaborate activities observed by the agents, which led to the transportation of methamphetamine manufacturing materials to a remote location in a rural area, provided probable cause of a clandestine laboratory at that location and in the building described in the affidavit.

“The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place.” (*Illinois v. Gates* (1983) 462 U.S. 213, 238 (*Gates*).) As a reviewing court, our task is simply to determine “whether the magistrate had a substantial basis for concluding a fair probability existed that a search would uncover wrongdoing. [Citation.]” (*People v. Kraft* (2000) 23 Cal.4th 978, 1040 (*Kraft*); see *Gates, supra*, at pp. 238-239.) “The magistrate’s determination of probable cause is entitled to deferential review. [Citation.]” (*Kraft, supra*, at p. 1041.)

Here the magistrate reviewed an affidavit detailing an elaborate multi-vehicular ballet which culminated in two vehicles being loaded to the gunwales with chemicals and equipment used in the manufacture of methamphetamine—and, we might add, for no apparent lawful purpose in the quantities observed. The vehicles traveled together from Hayward to Santa Rosa, added a third vehicle to their convoy, and proceeded to a remote area of Lake County—a rural road containing only two structures.

The agents saw the transfer of cargo from the Chrysler to the maroon minivan at the location suspected of being a clandestine laboratory. This location is first referred to

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We note the trial court granted the motion to suppress as to the double-wide trailer, i.e., Location #2—but it is not clear what, if anything, was seized from that location.

in the affidavit as “a remote location on Verdant Vales Road in Lake County which is approximately 1.1 miles from Socrates Mine Road,” and later as “the methamphetamine laboratory location” and “the laboratory site.” But given its precise location pinpointed by its exact distance from Socrates Mine Road, as the description of the shed at that location in the warrant, it is clear—as the trial court found—that the remote location was in fact Location #1. And given the fact that Location #1 was the end of the line of a considerable quantity of raw materials and equipment for methamphetamine manufacture, the magistrate could reasonably find probable cause that Location #1 was a clandestine lab.<sup>4</sup>

Under the totality of the circumstances, the magistrate viewed the affidavit with the expert opinion as demonstrating a sequence of connecting events that culminated in a remote destination where the contraband was to be unloaded and used to make methamphetamine. The logical and reasonable inference from the surveillance activity was that the maroon minivan had reached this isolated shed at Location #1 as its final goal where the processing was to take place.

The search warrant affidavit was sufficient to establish probable cause. The motion to suppress was properly denied.

### **III. DISPOSITION**

The judgment is affirmed.

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<sup>4</sup> Defendant’s reliance on *People v. Hernandez* (1994) 30 Cal.App.4th 919 (*Hernandez*), is misplaced. *Hernandez* is distinguishable. It involved a search warrant for an urban residence based solely on the fact that a drug dealer parked nearby. There was no link between the vehicle and the residence. (*Id.* at pp. 921-922, 924-925.) In the present case, we have a shed in a rural area, where drug manufacturers typically set up shop, which was the end point of an elaborate transportation operation of the materials for methamphetamine manufacture.



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Marchiano, P.J.

We concur:

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Stein, J.

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Margulies, J.

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